

PROGRAMMATIC AGREEMENT

AMONG

**U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER**

AND

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING THE IMPLEMENTATION OF

USDA RURAL DEVELOPMENT PROGRAMS

IN PENNSYLVANIA

FEBRUARY 2005

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WHEREAS, the U.S. Department of Agriculture, Rural Development is authorized under the Housing Act, as amended, the Rural Electrification Act, as amended, and the Consolidated Farm and Rural Development Act, to carry out various programs and services in support of its Applicant activities, (Appendix A) by providing financial assistance ("undertaking") in rural America; and,

WHEREAS, Section 106 of the National Historic Preservation Act (16 U.S.C. §§ 470 et ("the Act")) requires Federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Rural Development has determined that the administration and implementation of certain programs and services in support of its Applicant's activities, may have an effect on historic properties listed or eligible for inclusion in the National Register of Historic Places and has consulted with the State Historic Preservation Officer (SHPO) and the Council pursuant to 36 CFR Part 800.14; and,

WHEREAS, Rural Development may provide financial assistance for programs either alone or jointly with other agencies that utilize Federal funding requiring compliance with Section 106 of the National Historic Preservation Act; and,

WHEREAS, Rural Development will consult with the Tribal Historic Preservation Officer (THPO) of any Federally recognized Indian Tribe ("Tribe") in the implementation of programs, services and Applicant activities affecting Tribal lands and having an effect on historic properties important to the Tribes; and,

WHEREAS, Rural Development can more effectively fulfill its Section 106 responsibilities if a programmatic approach to identify financial assistance programs, services, and Applicant activities that can be excluded (Appendix B) from Section 106 review is taken because of a limited and/or minimal potential to adversely affect historic properties; and,

WHEREAS, it is not feasible for Rural Development to conduct the standard Section 106 process with respect to certain replacement and temporary measures carried out in response to a declared Federal emergency; and,

WHEREAS, 36 CFR Part 800.14(b) of the Council's regulations, allow Programmatic Agreements to be used when effects on historic properties are similar and repetitive or are multi-State or regional in scope; and,

NOW THEREFORE, the parties agree that Rural Development will administer and implement certain programs, services, and Applicant activities in accordance with the following Stipulations to satisfy its Section 106 responsibilities. Rural Development will not undertake funding approval on any applicant's activity until it is reviewed pursuant to this Programmatic Agreement.

STIPULATIONS

To the extent of its legal authority, and with support from the Rural Development Applicant, the SHPO, and the Council, Rural Development will ensure that the following measures are implemented:

I. RURAL DEVELOPMENT ROLE AND RESPONSIBILITIES

A. For all programs, services or Applicant activities not listed in Appendix B, Rural Development will comply with Section 106 in accordance with 36 CFR Part 800.

B. Rural Development will provide technical guidance on Section 106 procedures to its Applicants, advise its Applicants to avoid taking actions that could potentially adversely impact historic properties, maintain project files, and report on programs, services, and Applicant activities as required in this Programmatic Agreement.

C. Rural Development will obtain support from its Applicants who shall initiate consultation with the SHPO's office, assist in identifying other consulting parties with a demonstrated interest in the undertaking, and prepare any required analyses. The Applicant may retain the services of a professional consulting firm specializing in historic, cultural, or archaeological resources to assist them. This Stipulation does not extend to the Applicant making a finding and/or determination on behalf of Rural Development.

D. Appendix B identifies those Rural Development programs and services and Applicant activities that will have limited potential to affect historic properties subject to Section 106 review. Rural Development will document (as an attachment to the environmental review form/document) that the Applicant's activity meets a program, service, or activity listed in Appendix B. Rural Development may then proceed with its undertaking of providing financial assistance, without requesting SHPO comments.

E. If a Rural Development Applicant requests Rural Development funding for a proposal previously reviewed by another Federal agency and for which the Section 106 consultation has been completed, additional Section 106 consultation will not be required on Rural Development's part, so long as the current proposal is identical to that previously reviewed. The Applicant shall certify to Rural Development that the proposal has not changed in scope or detail and provide previous SHPO concurrence relative to

this activity by submitting the SHPO's concurrence letter for inclusion in Rural Development's environmental review document project files.

F. Where Rural Development must carry out replacement or temporary measures in response to a declared Federal emergency to protect against immediate threats to life or property, Rural Development will implement 36 CFR Part 800.12(b)(2) to meet its Section 106 responsibilities.

II. CHANGES TO AN APPROVED PROPOSAL

If an Applicant's proposal changes and does not meet an excluded program, service or activity identified in Appendix B, the Applicant and/or Rural Development will consult with the SHPO to determine if the change will have an effect on any historic properties.

III. UNANTICIPATED DISCOVERY OF ARCHEAOLOGICAL PROPERTIES DURING CONSTRUCTION ACTIVITIES

A. Should an undertaking affect a previously unidentified archaeological site, Rural Development will require that the applicant take all reasonable measures to avoid, preserve in place or minimize harm to the site, up to and including stopping construction in the vicinity of the discovery until such time as coordination and mitigation, if any, of the site is completed.

B. Rural Development will require its Applicants to notify the Rural Development Local/Area (processing) Office as soon as possible if it appears that their activities will affect a previously unidentified archaeological property. The processing office will immediately notify the State Environmental Coordinator (SEC) and the SHPO of the discovery, along with the possible actions; to initiate consultation in accordance with 36 CFR 800.13. The SHPO will respond within 48 hours of the notification or on the first working day if preceded by a weekend or holiday. Rural Development will take into account the SHPO's recommendations and advise the Applicant to carry out appropriate and specific actions.

C. Unanticipated discoveries will be identified and evaluated by a qualified professional who shall meet, at a minimum, the Secretary of Interior's *Professional Qualification Standards* (44 FR 44738-9) for archeologists. The costs of such professional services will generally be the responsibility of the Applicant.

D. If such properties are eligible for listing to the National Register, Rural Development and its Applicant will consult with the SHPO on measures to avoid further impacts to the discovery. If it is determined that the discoveries are not eligible, Rural Development may notify its Applicant to proceed with the activities.

E. Rural Development will ensure that any human remains and grave associated artifacts encountered are brought to the attention of the SHPO within 24 hours of the

discovery. No activities which might disturb or damage the remains will be conducted until all parties have determined whether excavation is necessary and/or desirable. All procedures will follow guidance outlined in the NPS Publication, National Register Bulletin 41 Guidelines for Evaluating and Registering Cemeteries and Burial Places (Washington D.C. 1992), The Native American Graves Protection and Repatriation Act of 1990 (PL 101-601), and the Pennsylvania Historical and Museum Commission's "Policy for the Treatment of Human Remains" (PHMC 1993).

IV. NATIVE AMERICAN CONSULTATION

A. There are no Federally-recognized Tribes or Tribal lands in Pennsylvania. However, Rural Development will make a reasonable and good-faith effort to identify historic properties of religious and cultural significance to Indian Tribes, which may have potential for impact by Rural Development programs, services and its applicant's activities.

B. In consultation with SHPO, Rural Development has identified Seneca Nation, Cayuga Nation and Delaware Nation as Federally-recognized Indian Tribes that may have interest in participating in Rural Developments Section 106 review process. In addition there may be 12 other Indian Tribal contacts having an interest to participate in the process. Rural Development will seek to obtain a decision from these Tribes regarding their interest in participating in the agency's Section 106 review process. Those Tribes with a demonstrated interest in participation will be consulted. The Rural Development Programs, Services and Applicant's activities identified in Appendix B are not expected to have any potential for impact on historic properties of religious and cultural significance to Indian Tribes.

V. MISCELLANEOUS PROVISIONS

A. Anticipatory Actions

1) Except as noted below, Rural Development will not grant assistance to an Applicant who, with the intent to avoid the requirements of the Programmatic Agreement or Section 106, has intentionally, significantly, and adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. (Exception: If after consulting with the SHPO and Council, Rural Development determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the Applicant, Rural Development will continue consultation for the proposal pursuant to 36 CFR Part 800.9(c)(3).

B. Administrative Coordination

1) Appropriate State Office staff (Program Director and State Environmental Coordinator) will be notified of the execution of this Programmatic Agreement. State

Office staff will develop management procedures to ensure that the stipulations and terms are implemented.

2) All time designations are in calendar days. If any required signatory does not comment on a determination related to a program, service or Applicant's activity within an agreed upon timeframe, Rural Development may assume the required signatory's concurrence with Rural Development's determination.

C. Dispute Resolution

1) Should any party to this Programmatic Agreement object, within thirty (30) days to any actions pursuant to this Agreement, Rural Development will consult with the objecting party to resolve any such objection. If Rural Development determines that the objection cannot be resolved, Rural Development will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council shall either:

a. Provide Rural Development with recommendations pursuant to 36 CFR Part 800.2(b)(2), which Rural Development will take into account in reaching a final decision regarding the dispute; or,

b. Notify Rural Development that it will comment pursuant to 36 CFR Part 800.7(c), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by Rural Development in accordance with 36 CFR Part 800.7(c)(4) with reference to the subject dispute.

2) Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; the responsibility of Rural Development, the Council, and SHPO to carry out other actions pursuant to this Agreement that are not the subject of the dispute will remain unchanged.

3) If at any time during the implementation of the measures stipulated in this Programmatic Agreement, an objection should be raised by an interested member of the public, or a consulting party, Rural Development will take the objection into account and consult with the objecting party, other interested parties, and any signatories, as necessary, to resolve the objection.

D. Monitoring

1) The SHPO and the Council may monitor any activity carried out pursuant to this Programmatic Agreement. Rural Development will cooperate with the SHPO and Council should they request to monitor or to review project files.

VI. DURATION

This Programmatic Agreement will remain in effect for 5 years or until Rural Development, in consultation with all other signatories determines that the terms of this Programmatic Agreement should be terminated pursuant to Stipulation VII B. or VII C. below.

VII. AMENDMENT, NON-COMPLIANCE, AND TERMINATION

A. If any signatory to this Programmatic Agreement determines that the Programmatic Agreement cannot be fulfilled, or that an amendment to the terms of this Programmatic Agreement must be made, the signatories will consult to seek amendment to the Programmatic Agreement. The process of amending this Programmatic Agreement will be the same as that exercised in creating the original Programmatic Agreement.

B. Rural Development, the SHPO, or the Council may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Programmatic Agreement will require compliance with 36 CFR Part 800.

C. This Programmatic Agreement may be terminated by the implementation of a subsequent Programmatic Agreement that explicitly terminates or supersedes this Agreement, or by Rural Development's implementation of Alternate Procedures, pursuant to 36 CFR Part 800.14(a), or of supplanting regulations.

D. In the event Rural Development does not carry out the terms of this Programmatic Agreement, Rural Development will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement for those programs, services, or Applicant activities.

VIII. APPLICABILITY

A. This Programmatic Agreement does not cover any Section 106 responsibilities that federal agencies other than Rural Development may have with regard to financial assistance programs, services, or activities.

B. Upon signature of this Programmatic Agreement by all required parties, Rural Development will provide individual copies to all parties.

C. Execution of this Agreement by all signatory parties and implementation by Rural Development evidences that Rural Development has taken into account the effects of those activities, programs, and services identified in Appendix B on historic properties and afforded the Council a reasonable opportunity in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800.

IX. SIGNATORY PARTIES

USDA RURAL DEVELOPMENT - PROGRAM SUPPORT STAFF

By: _____ Date: _____
Richard A. Davis, Director, Program Support Staff
1400 Independence Avenue, Washington, DC 20250

USDA RURAL DEVELOPMENT, WATER AND ENVIRONMENTAL PROGRAMS, ENGINEERING AND ENVIRONMENTAL STAFF

By: _____ Date: _____
Glendon D. Deal, Director, Engineering & Environmental Staff
1400 Independence Avenue, Washington, DC 20250

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Jean H. Cutler, Deputy State Historic Preservation Officer
400 North Street, Harrisburg, PA 17120

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler, Executive Director,
1100 Pennsylvania Avenue NW, Washington, DC 20004

APPENDIX A

RURAL DEVELOPMENT FINANCING PROGRAMS, ACTIVITIES, AND SERVICES

I. Rural Housing Service

Rural Housing Guaranteed Loan
Rural Housing Direct Loan
Housing Repair and Rehabilitation Loan
Housing Repair and Rehabilitation Grant
Self-Help Housing Technical Assistance Grant
Mutual Self-Help Loans
Rural Housing Site Loans
Individual Water and Waste Grants
Housing Application Packaging Grants
Farm Labor Housing Loans and Grants
Rural Rental Housing Loans
Guaranteed Rental Housing
Rental Assistance Program
Housing Preservation Grants
Single Family Home Ownership Loans and Guarantees
Multi-Family Housing Development
Community Facilities Loans, Grants, and Guarantees

II. Rural Business-Cooperative Service

Business and Industry Loans
Business and Industry Loan Guarantees
Rural Enterprise Grants
Intermediary Relending Program Loans
Rural Economic Development Loans
Rural Economic Development Grants
Renewable Energy and Energy Efficiency Program
Specific Risk Materials and Certain Cattle Renewable Energy Guaranteed Loan
Pilot Program
Rural Business Investment Program
Value Added Producer Grants
Technical Assistance Grants
Rural Business Opportunity Grants

III. Rural Utilities Service

Water and Waste Disposal Loans
Water and Waste Disposal Grants
Water and Waste Disposal Loan Guarantees
Electric and Telecommunications Programs
Solid Waste Management Grants
Distance Learning and Telemedicine Loans
Distance Learning and Telemedicine Grants

APPENDIX B

The following Rural Development programs and services, and Applicant activities will not require review by the SHPO or the Council:

A. Site Modification Activities

1. Construction, demolition, repair or alteration of non-historic buildings and structures less than 50 years old; except when it is located adjacent to a listed or eligible property or located in a historic district.
2. Rehabilitation of single-family homes greater than 50 years old when rehabilitation consists solely of activities listed as being excluded in this Appendix.
3. Shallow ground disturbance of soil to a depth of twelve (12) inches or less, on a land area of 1 acre or less (i.e. landscaping).
4. Projects to bring buildings and structures up to code/standards, provided no structural alterations are involved.
5. The installation of cross bracing on pier and post foundations; metal fasteners; collar ties; gussets; tie downs; strapping and anchoring of mechanical, electrical and plumbing equipment; concealed anchoring of furniture; installation of plywood diaphragms beneath first floor joists, above top floor ceiling rafters, and on roofs; and, automatic gas shut off valves, provided such upgrades are not visible on the exterior or within character defining historic interiors.
6. Correcting structural deficiencies in basements, crawl spaces, and beneath porches.
7. Removal and disposal of on-site abandoned debris and personal property.
8. Clean and seal treatments or stabilization necessary to secure and protect vacant buildings and structures more than fifty (50) years old, consistent with NPS Preservation Brief #31 Mothballing Historic Buildings.
9. Trimming, removal of dead trees, and planting of native grasses, shrubs, bushes and trees.
10. Testing for removal of any hazardous materials such as lead paint and asbestos provided it does not involve the removal or destruction of character-defining features.
11. Interior lead paint abatement when it is limited to washing, scraping and repainting, wallpapering, and chemical stripping of lead-painted surfaces. Installation of new window jambs or jamb liners, installation of metal panning in window wells, and replacement of non-significant flat stock trim. Exterior lead paint abatement that includes scraping and repainting of exterior wood and masonry surfaces.

12. Temporary placement of generators and permanent installation of generators placed inside existing buildings or that occupy an area under 50 square feet behind the building they service.

13. Installation of wheelchair ramps on secondary elevations meeting code as long as ramps can be easily removed and are not permanently affixed to the building. Stairs and railings may not be removed to construct a ramp. Installation of handicapped curb cuts is permissible.

14. Installation of grab bars and other minor interior modifications for disabled accessibility.

15. Installation of temporary structures for such uses as classrooms or offices provided they are not placed adjacent to a listed or eligible property or in a historic district.

16. Construction of overhead utility lines on or immediately parallel to roads or streets within the corporate limits of a community, or areas immediately contiguous to these limits, or, if unincorporated, the limits of the developed areas within the Applicant's service area if located outside of or adjacent to a historic district.

17. Construction of single-pole or double-pole overhead power lines on or immediately parallel to existing road or highway right-of-way where the line will:

- a. Be on or within five (5) feet of the edge of the existing right-of-way;
- b. Be in cultivated land, or in an open area where no tree clearing is needed;

and,

- c. Include the installation of poles only by auguring in the standard manner.

18. Projects involving underground utilities installed by plow.

19. Placement of transformers, utility pedestals, or water meters immediately adjacent to installed utility lines.

20. Decommissioning or plugging wells and backfilling mine shafts when the backfilling does not remove or destroy supporting walls or character defining elements.

21. Temporary installation of water, sewer, or gas lines on the surface of the ground.

22. Construction of new ancillary facilities adjacent or appurtenant to existing above-ground facilities constructed for replacement water wells.

23. Repair or reconstruction of above-ground water storage facilities not involving modification in height or new ground disturbance for the installation of footings or foundations pads.

24. Test Holes and Wells - Soil borings and associated tests or drilling exploratory test wells that do not require a temporary or permanent new access road to a site.

B. Repair, Alteration, and Replacement Activities

1. Repair or in-kind replacement of hardscaping such as paving, driveways, parking lots, walkways, planters, trellises, irrigation systems and lighting.

2. Repair or in-kind replacement of fencing and other freestanding exterior walls.
3. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind.
4. Temporary stabilization bracing or shoring with no damage, loss or historic fabric or irreversible alterations.
5. Power washing of exterior features if performed at no more than 600-psi with mild detergent. Refer to National Park Service (NPS) Preservation Brief # 6 Dangers of Abrasive Cleaning to Historic Buildings.
6. Cleaning masonry surfaces with natural bristle brushes and mild detergent using low-pressure water. Repointing with mortar that matches the original in strength, composition, color, and texture and that duplicates the rake and other joints that define the existing characteristics. Refer to NPS Preservation Brief #2, Re-pointing Mortar Joints in Historic Brick Buildings (Revised).
7. Repainting of exterior surfaces provided that destructive surface preparation treatments, including but not limited to waterblasting, sandblasting and chemical cleaning are not used.
8. Repair, or in-kind replacement, strengthening of roofing, gutters, or downspouts.
9. Installation of ridge vents or louver type soffit vents.
10. Fascia/Soffit repair or in-kind replacements when the new fascia/soffit will be of the same dimensions, configuration, design and material as the original.
11. Repair or in-kind reconstruction of concrete/masonry walls, parapets, fireplaces, chimneys, or cornices, including comparable brick, and mortar that matches the color, strength, content, rake and joint width. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
12. Repair or in kind replacement of signs and/or awnings.
13. Repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or other trim when the repair and replacement is done in-kind to closely match existing material and design.
14. Repair or in kind replacement of windows and doors where profiles, elevations, details and materials match those of the original windows and doors.
15. Replacement of window panes, provided the existing window material and design are not altered. Double or triple clear glazing and untinted glass are allowed.
16. Caulking, weatherstripping, reglazing and repainting of windows, installation of new window jambs or jamb liners, repair, replacement or installation of storm windows (exterior, interior, metal or wood) provided they match the historic shape and size of the historic prime

windows and that the meeting rail coincides with that of the prime window. Color should match trim, if possible.

17. Repair of historic door and window hardware.
18. Installation of security devices such as dead bolts, door locks, window latches and door peepholes.
19. In-kind replacement of insulation systems, provided that decorative interior plaster, woodwork, or exterior siding is not altered. Refer to NPS Preservation Bulletin # 3 Conserving Energy in Historic Buildings.
20. Repair, in-kind replacing, retaining, preserving, protecting, or maintaining of in-kind materials or features of interior floors, walls, ceilings, stairs, flat plaster, and wallboard.
21. deleted
22. Anchoring of walls to floor systems provided the anchors are embedded and concealed from exterior view and any disturbed historic fabric is restored in kind.
23. deleted
24. Repair or replacement of vertical transportation systems (i.e. elevators and stairs).
25. Repair, replacement and installation of the following systems provided that such work does not affect the exterior or require the installation of new exposed ducts throughout the interior: electrical work; plumbing pipes and fixtures; HVAC system improvements; installation of fire and smoke detectors; fire suppression, security alarm systems, ventilation systems; and bathroom improvements where work is contained within the existing building.
26. Replacement of appliances.
27. Line painting, maintenance repair, resurfacing or reconstruction of roads provided no change in width, surfaces, or vertical alignment of drainage occurs. Repair replacement of guide rails and traffic signalization.
28. In-kind repairs of bridge abutments where no excavation or new construction is proposed.
29. In-kind repair or upgrade to codes and standards of existing piers, docks, boardwalks, and boat ramps provided the footprint will substantially match the existing footprint.
30. Repair of existing airport runways.
31. In kind repair of safety components, including beacons, as long as no new access is required.
32. Repair or replacement of railroad safety components
33. Repair of railroad crossings

34. Replacement of existing bolt-connected railroad tracks and wood ties.
35. Resurfacing of recreational facilities such as tennis courts, basketball courts, or street hockey.
36. Reconductoring, reconstruction or conversion to a higher voltage of existing overhead lines or cables on existing right-of-ways. This includes the complete replacement of existing poles utilizing the same or different span lengths at or immediately adjacent to the existing pole locations, where the height increases are less than 20% of existing.
37. Upgrading existing telecommunications towers where no height increases are proposed and where the same or substantially equivalent support structure will be utilized at the existing tower location.
38. Repair or replacement of existing wires, anchors, crossarms, and other miscellaneous hardware on existing overhead lines, and of existing poles when conducted at or immediately adjacent to the old pole locations.
39. Relocation of existing overhead lines or cables resulting from highway reconstruction or improvement projects, where the relocated lines or cables will be located within or immediately adjacent to the new highway easement.
40. Repair or replacement of subsurface water, sewer, natural gas, electric or telecommunications lines within previously disturbed road right-of-ways or utility corridors.
41. Modifications to existing water, sewer, natural gas distribution, electric or telecommunication facilities where no new above-ground structures are involved and the area where such modifications will occur has been substantially disturbed.

C. Loan Making and Servicing Activities

1. The legal transfer of ownership of non inventory property through acquisition, sale, transfer, and/or assumption of an existing property where no physical improvements or change in use is proposed or is reasonably foreseeable.
2. Technical assistance or predevelopment grants provided it involve no construction or real property acquisition. These grants are typically used for feasibility studies, engineering studies, environmental reviews, and other service types of assistance
3. Intermediary relending programs to intermediary lenders. Only the loan and grant to the intermediary will be excluded. The loan and grant to the ultimate recipient by the intermediary is not excluded.
4. Loans or grants not involving any construction. These types of activities include loans and grants for equipment, working capital, debt restructure, emergency vehicles, and/or servicing activities.